

AMENDED IN SENATE MAY 4, 2005

**SENATE BILL**

**No. 828**

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**Introduced by Senator Maldonado**

February 22, 2005

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An act to amend Sections 8355 and 12990 of, and to amend and repeal Section 14851 of, the Government Code, to amend Sections 6108, 10286.1, 10295.1, 10296, 12163, and 12205 of the Public Contract Code, and to amend Sections 42480 and 42498 of the Public Resources Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 828, as amended, Maldonado. Public contracts.

Existing law imposes various requirements and prohibitions on parties that provide goods to the state under a contract. Among these requirements is a requirement that the contractor certify that it will provide a drug-free workplace, that it has not provided goods under the contract that were produced under specified prohibited labor conditions, that, in the case of specified contracts, the goods provided meet the statutory minimum percentage of recycled paper, and that, in the case of contracts for the sale or lease of covered electronic devices or cell phones, the contractor has complied with specified provisions of law. Existing law also requires, in the case of specified contracts, that the contractor provide a sworn declaration that it is not in violation of an order from the National Labor Relations Board. Existing law further requires each party, and its affiliates, that are offered a contract to do business with the state to provide a seller's permit or certificate of registration that was issued under the State Sales and Use Tax Law, as specified. Existing law also prohibits the state from contracting with an expatriate corporation, as defined. Existing law also requires every state contract and subcontract to

contain a nondiscrimination clause, as provided, and further requires contractors and subcontractors to give written notice of their obligations under the clause to labor organizations, as specified.

This bill would specify that these requirements and prohibitions do not apply to ~~contracts for goods of \$5,000 or less~~ *a credit card purchase of goods of \$2,500 or less, as specified.*

Existing law, until December 31, 2005, authorizes the Office of State Printing to accept paid advertisements in materials printed or published by the state.

This bill would extend to an indefinite time period the authorization for the Office of State Printing to accept paid advertisements. This bill would also require any state agency that was not authorized to accept paid advertising in its publications before the operative date of the bill to use the Office of State Printing for all paid advertising in its publications.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 8355 of the Government Code is
- 2 amended to read:
- 3 8355. (a) Every person or organization awarded a contract or
- 4 a grant for the procurement of any property or services from any
- 5 state agency shall certify to the contracting or granting agency
- 6 that it will provide a drug-free workplace by doing all of the
- 7 following:
- 8 (1) Publishing a statement notifying employees that the
- 9 unlawful manufacture, distribution, dispensation, possession, or
- 10 use of a controlled substance is prohibited in the person's or
- 11 organization's workplace and specifying the actions that will be
- 12 taken against employees for violations of the prohibition.
- 13 (2) Establishing a drug-free awareness program to inform
- 14 employees about all of the following:
- 15 (A) The dangers of drug abuse in the workplace.
- 16 (B) The person's or organization's policy of maintaining a
- 17 drug-free workplace.
- 18 (C) Any available drug counseling, rehabilitation, and
- 19 employee assistance programs.

1 (D) The penalties that may be imposed upon employees for  
2 drug abuse violations.

3 (3) Requiring that each employee engaged in the performance  
4 of the contract or grant be given a copy of the statement required  
5 by subdivision (a) and that, as a condition of employment on the  
6 contract or grant, the employee agrees to abide by the terms of  
7 the statement.

8 ~~(b) The certification requirement set forth in subdivision (a)~~  
9 ~~does not apply to contracts and grants for goods of five thousand~~  
10 ~~dollars (\$5,000) or less.~~

11 *(b) (1) The certification requirement set forth in subdivision*  
12 *(a) does not apply to a credit card purchase of goods of two*  
13 *thousand five hundred dollars (\$2,500) or less.*

14 *(2) The total amount of exemption authorized herein shall not*  
15 *exceed seven thousand five hundred dollars (\$7,500) per year for*  
16 *each company from which a state agency is purchasing goods by*  
17 *credit card. It shall be the responsibility of each state agency to*  
18 *monitor the use of this exemption and adhere to these restrictions*  
19 *on such purchases.*

20 SEC. 2. Section 12990 of the Government Code is amended  
21 to read:

22 12990. (a) Any employer who is, or wishes to become, a  
23 contractor with the state for public works or for goods or services  
24 is subject to the provisions of this part relating to discrimination  
25 in employment and to the nondiscrimination requirements of this  
26 section and any rules and regulations that implement it.

27 (b) Prior to becoming a contractor or subcontractor with the  
28 state, an employer may be required to submit a nondiscrimination  
29 program to the department for approval and certification and may  
30 be required to submit periodic reports of its compliance with that  
31 program.

32 (c) Every state contract and subcontract for public works or for  
33 goods or services shall contain a nondiscrimination clause  
34 prohibiting discrimination on the bases enumerated in this part by  
35 contractors or subcontractors. The nondiscrimination clause shall  
36 contain a provision requiring contractors and subcontractors to  
37 give written notice of their obligations under that clause to labor  
38 organizations with which they have a collective bargaining or  
39 other agreement. These contractual provisions shall be fully and  
40 effectively enforced. This subdivision does not apply to ~~contracts~~

~~1 or subcontracts for goods of five thousand dollars (\$5,000) or~~  
~~2 less; a credit card purchase of goods of two thousand five~~  
~~3 hundred dollars (\$2,500) or less. The total amount of exemption~~  
~~4 authorized herein shall not exceed seven thousand five hundred~~  
~~5 dollars (\$7,500) per year for each company from which a state~~  
~~6 agency is purchasing goods by credit card. It shall be the~~  
~~7 responsibility of each state agency to monitor the use of this~~  
~~8 exemption and adhere to these restrictions on such purchases.~~

(d) The department shall periodically develop rules and regulations for the application and implementation of this section, and submit them to the commission for consideration and adoption in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1. Those rules and regulations shall describe and include, but not be limited to, all of the following:

(1) Procedures for the investigation, approval, certification, decertification, monitoring, and enforcement of nondiscrimination programs.

(2) The size of contracts or subcontracts below which any particular provision of this section shall not apply.

(3) The circumstances, if any, under which a contractor or subcontractor is not subject to this section.

(4) Criteria for determining the appropriate plant, region, division, or other unit of a contractor's or subcontractor's operation for which a nondiscrimination program is required.

(5) Procedures for coordinating the nondiscrimination requirements of this section and its implementing rules and regulations with the California Plan for Equal Opportunity in Apprenticeship, with the provisions and implementing regulations of Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1, and with comparable federal laws and regulations concerning nondiscrimination, equal employment opportunity, and affirmative action by those who contract with the United States.

(6) The basic principles and standards to guide the department in administering and implementing this section.

(e) Where a contractor or subcontractor is required to prepare an affirmative action, equal employment, or nondiscrimination program subject to review and approval by a federal compliance agency, that program may be filed with the department, instead

1 of any nondiscrimination program regularly required by this  
2 section or its implementing rules and regulations. Such a  
3 program shall constitute a prima facie demonstration of  
4 compliance with this section. Where the department or a federal  
5 compliance agency has required the preparation of an affirmative  
6 action, equal employment, or nondiscrimination program subject  
7 to review and approval by the department or a federal  
8 compliance agency, evidence of such a program shall also  
9 constitute prima facie compliance with an ordinance or  
10 regulation of any city, city and county, or county that requires an  
11 employer to submit such a program to a local awarding agency  
12 for its approval prior to becoming a contractor or subcontractor  
13 with that agency.

14 (f) Where the department determines and certifies that the  
15 provisions of this section or its implementing rules and  
16 regulations are violated or where the commission, after hearing  
17 an accusation pursuant to Section 12967, determines a contractor  
18 or subcontractor is engaging in practices made unlawful under  
19 this part, the department or the commission may recommend  
20 appropriate sanctions to the awarding agency. Any such  
21 recommendation shall take into account the severity of the  
22 violation or violations and any other penalties, sanctions, or  
23 remedies previously imposed.

24 SEC. 3. Section 14851 of the Government Code, as amended  
25 by Section 1 of Chapter 220 of the Statutes of 2002, is amended  
26 to read:

27 14851. (a) The Office of State Printing may accept paid  
28 advertisements in materials printed or published by the state,  
29 except that the department shall not print or publish paid political  
30 advertising.

31 (b) The Office of State Printing may print checks and other  
32 printed matter necessary for the operation of any industry board  
33 or state agricultural district board at the expense of the state.

34 (c) To reduce duplication of staff resources and to provide  
35 consistency in the review for appropriateness of advertisements,  
36 an agency of the state that was not authorized to accept paid  
37 advertising in its publications before January 1, 2006, shall use  
38 the services of the Office of State Printing for all paid advertising  
39 in its publications.

1 SEC. 4. Section 14851 of the Government Code, as added by  
2 Section 2 of Chapter 220 of the Statutes of 2002, is repealed.

3 SEC. 5. Section 6108 of the Public Contract Code is amended  
4 to read:

5 6108. (a) (1) Every contract entered into by any state agency  
6 for the procurement or laundering of apparel, garments or  
7 corresponding accessories, or the procurement of equipment,  
8 materials, or supplies, other than procurement related to a public  
9 works contract, shall require that a contractor certify that no  
10 apparel, garments or corresponding accessories, equipment,  
11 materials, or supplies furnished to the state pursuant to the  
12 contract have been laundered or produced in whole or in part by  
13 sweatshop labor, forced labor, convict labor, indentured labor  
14 under penal sanction, abusive forms of child labor or exploitation  
15 of children in sweatshop labor, or with the benefit of sweatshop  
16 labor, forced labor, convict labor, indentured labor under penal  
17 sanction, abusive forms of child labor or exploitation of children  
18 in sweatshop labor. The contractor shall agree to comply with  
19 this provision of the contract.

20 (2) The contract shall specify that the contractor is required to  
21 cooperate fully in providing reasonable access to the contractor's  
22 records, documents, agents or employees, or premises if  
23 reasonably required by authorized officials of the contracting  
24 agency, the Department of Industrial Relations, or the  
25 Department of Justice determine the contractor's compliance  
26 with the requirements under paragraph (1).

27 (b) (1) Any contractor contracting with the state who knew or  
28 should have known that the apparel, garments or corresponding  
29 accessories, equipment, materials, or supplies furnished to the  
30 state were laundered or produced in violation of the conditions  
31 specified in subdivision (a) when entering into a contract  
32 pursuant to subdivision (a), may, subject to subdivision (c), have  
33 any or all of the following sanctions imposed:

34 (A) The contract under which the prohibited apparel, garments  
35 or corresponding accessories, equipment, materials, or supplies  
36 were laundered or provided may be voided at the option of the  
37 state agency to which the equipment, materials, or supplies were  
38 provided.

39 (B) The contractor may be assessed a penalty which shall be  
40 the greater of one thousand dollars (\$1,000) or an amount

1 equaling 20 percent of the value of the apparel, garments or  
2 corresponding accessories, equipment, materials, or supplies that  
3 the state agency demonstrates were produced in violation of the  
4 conditions specified in paragraph (1) of subdivision (a) and that  
5 were supplied to the state agency under the contract.

6 (C) The contractor may be removed from the bidder's list for a  
7 period not to exceed 360 days.

8 (2) Any moneys collected pursuant to this subdivision shall be  
9 deposited into the General Fund.

10 (c) (1) When imposing the sanctions described in subdivision  
11 (b), the contracting agency shall notify the contractor of the right  
12 to a hearing, if requested, within 15 days of the date of the notice.  
13 The hearing shall be before an administrative law judge of the  
14 Office of Administrative Hearings in accordance with the  
15 procedures specified in Chapter 5 (commencing with Section  
16 11500) of Part 1 of Division 3 of Title 2 of the Government  
17 Code. The administrative law judge shall take into consideration  
18 any measures the contractor has taken to ensure compliance with  
19 this section, and may waive any or all of the sanctions if it is  
20 determined that the contractor has acted in good faith.

21 (2) The agency shall be assessed the cost of the administrative  
22 hearing, unless the agency has prevailed in the hearing, in which  
23 case the contractor shall be assessed the cost of the hearing.

24 (d) (1) Any state agency that investigates a complaint against  
25 a contractor for violation of this section may limit its  
26 investigation to evaluating the information provided by the  
27 person or entity submitting the complaint and the information  
28 provided by the contractor.

29 (2) Whenever a contracting officer of the contracting agency  
30 has reason to believe that the contractor failed to comply with the  
31 requirements under paragraph (1) of subdivision (a), the agency  
32 shall refer the matter for investigation to the head of the agency  
33 and, as the head of the agency determines appropriate, to either  
34 the Director of Industrial Relations or the Department of Justice.

35 (e) (1) For purposes of this section, the term "forced labor"  
36 shall have the same meaning as in Section 1307 of Title 19 of the  
37 United States Code.

38 (2) "Abusive forms of child labor" means any of the  
39 following:

1 (A) All forms of slavery or practices similar to slavery, such as  
2 the sale and trafficking of children, debt bondage, and serfdom  
3 and forced or compulsory labor, including forced or compulsory  
4 recruitment of children for use in armed conflict.

5 (B) The use, procuring, or offering of a child for prostitution,  
6 for the production of pornography, or for pornographic  
7 performances.

8 (C) The use, procuring, or offering of a child for illicit  
9 activities, in particular for the production and trafficking of illicit  
10 drugs.

11 (D) All work or service exacted from or performed by any  
12 person under the age of 18 either under the menace of any  
13 penalty for its nonperformance and for which the worker does  
14 not offer oneself voluntarily, or under a contract, the enforcement  
15 of which can be accomplished by process or penalties.

16 (E) All work or service exacted from or performed by a child  
17 in violation of all applicable laws of the country of manufacture  
18 governing the minimum age of employment, compulsory  
19 education, and occupational health and safety.

20 (3) “Exploitation of children in sweatshop labor” means all  
21 work or service exacted from or performed by any person under  
22 the age of 18 years in violation of more than one law of the  
23 country of manufacture governing wage and benefits,  
24 occupational health and safety, nondiscrimination, and freedom  
25 of association.

26 (4) “Sweatshop labor” means all work or service extracted  
27 from or performed by any person in violation of more than one  
28 law of the country of manufacture governing wages, employee  
29 benefits, occupational health, occupational safety,  
30 nondiscrimination, or freedom of association.

31 (5) “Apparel, garments or corresponding accessories”  
32 includes, but is not limited to, uniforms.

33 (6) Notwithstanding any other provision of this section,  
34 “forced labor” and “convict labor” do not include work or  
35 services performed by an inmate or a person employed by the  
36 Prison Industry Authority.

37 (7) “State agency” means any state agency in this state.

38 (f) (1) On or before February 1, 2004, the Department of  
39 Industrial Relations shall establish a contractor responsibility  
40 program, including a Sweatfree Code of Conduct, to be signed by



all bidders on state contracts and subcontracts. Any state agency responsible for procurement shall ensure that the Sweatfree Code of Conduct is available for public review at least 30 calendar days between the dates of receipt and the final award of the contract. The Sweatfree Code of Conduct shall list the requirements that contractors are required to meet, as set forth in subdivision (g).

(2) Upon implementation in the manner described in paragraph (4), every contract entered into by any state agency for the procurement or laundering of apparel, garments or corresponding accessories, or for the procurement of equipment or supplies, shall require that the contractor certify in accordance with the Sweatfree Code of Conduct that no apparel, garments or corresponding accessories, or equipment, materials, or supplies, furnished to the state pursuant to the contract have been laundered or produced, in whole or in part, by sweatshop labor.

(3) The appropriate procurement agency, in consultation with the Director of Industrial Relations, shall employ a phased and targeted approach to implementing the Sweatfree Code of Conduct. Sweatfree Code of Conduct procurement policies involving apparel, garments and corresponding accessories may be permitted a phasein period of up to one year for purposes of feasibility and providing sufficient notice to contractors and the general public. The appropriate procurement agency, in consultation with the Director of Industrial Relations, shall target other procurement categories based on the magnitude of verified sweatshop conditions and the feasibility of implementation, and may set phasein goals and timetables of up to three years to achieve compliance with the principles of the Sweatfree Code of Conduct.

(4) In order to facilitate compliance with the Sweatfree Code of Conduct, the Department of Industrial Relations shall explore mechanisms employed by other governmental entities, including, but not limited to, New Jersey Executive Order 20, of 2002, to ensure that businesses that contract with this state are in compliance with this section and any regulations or requirements promulgated in conformance with this section, as amended by the act adding this paragraph. The mechanisms explored may include, but not be limited to, authorization to contract with a competent nonprofit organization that is neither funded nor

1 controlled, in whole or in part, by a corporation that is engaged in  
2 the procurement or laundering of apparel, garments, or  
3 corresponding accessories, or the procurement of equipment,  
4 materials, or supplies. The Department of Industrial Relations, in  
5 complying with this paragraph, shall also consider any feasible  
6 and cost-effective monitoring measures that will encourage  
7 compliance with the Sweatfree Code of Conduct.

8 (5) To ensure public access and confidence, the Department of  
9 Industrial Relations shall ensure public awareness and access to  
10 proposed contracts by postings on the Internet and through  
11 communication to advocates for garment workers, unions, and  
12 other interested parties. The appropriate agencies shall establish  
13 a mechanism for soliciting and reviewing any information  
14 indicating violations of the Sweatfree Code of Conduct by  
15 prospective or current bidders, contractors, or subcontractors.  
16 The agencies shall make their findings public when they reject  
17 allegations against bidding or contracting parties.

18 (6) Contractors shall ensure that their subcontractors comply  
19 in writing with the Sweatfree Code of Conduct, under penalty of  
20 perjury. Contractors shall attach a copy of the Sweatfree Code of  
21 Conduct to the certification required by subdivision (a).

22 (g) No state agency may enter into a contract with any  
23 contractor unless the contractor meets the following  
24 requirements:

25 (1) Contractors and subcontractors in California shall comply  
26 with all appropriate state laws concerning wages, workplace  
27 safety, rights to association and assembly, and nondiscrimination  
28 standards as well as appropriate federal laws. Contractors based  
29 in other states in the United States shall comply with all  
30 appropriate laws of their states and appropriate federal laws. For  
31 contractors whose locations for manufacture or assembly are  
32 outside the United States, those contractors shall ensure that their  
33 subcontractors comply with the appropriate laws of countries  
34 where the facilities are located.

35 (2) Contractors and subcontractors shall maintain a policy of  
36 not terminating any employee except for just cause, and  
37 employees shall have access to a mediator or to a mediation  
38 process to resolve certain workplace disputes that are not  
39 regulated by the National Labor Relations Board.

(3) Contractors and subcontractors shall ensure that workers are paid, at a minimum, wages and benefits in compliance with applicable local, state, and national laws of the jurisdiction in which the labor, on behalf of the contractor or subcontractor, is performed. Whenever a state agency expends funds for the procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, the applicable labor standards established by the local jurisdiction through the exercise of either local police powers or local spending powers in which the labor, in compliance with the contract or purchase order for which the expenditure is made, is performed shall apply with regard to the contract or purchase order for which the expenditure is made, unless the applicable local standards are in conflict with, or are explicitly preempted by, state law. A state agency may not require, as a condition for the receipt of state funds or assistance, that a local jurisdiction refrain from applying the labor standards that are otherwise applicable to that local jurisdiction. The Department of Industrial Relations may, without incurring additional expenses, access information from any nonprofit organization, including, but not limited to, the World Bank, that gathers and disseminates data with respect to wages paid throughout the world, to allow the Department of Industrial Relations to determine whether contractors and subcontractors are compensating their employees at a level that enables those employees to live above the applicable poverty level.

(4) All contractors and subcontractors shall comply with the overtime laws and regulations of the country in which their employees are working.

(5) All overtime hours shall be worked voluntarily. Workers shall be compensated for overtime at either (A) the rate of compensation for regular hours of work, or (B) as legally required in the country of manufacture, whichever is greater.

(6) No person may be employed who is younger than the legal age for children to work in the country in which the facility is located. In no case may children under the age of 15 years be employed in the manufacturing process. Where the age for completing compulsory education is higher than the standard for

1 the minimum age of employment, the age for completing  
2 education shall apply to this section.

3 (7) There may be no form of forced labor of any kind,  
4 including slave labor, prison labor, indentured labor, or bonded  
5 labor, including forced overtime hours.

6 (8) The work environment shall be safe and healthy and, at a  
7 minimum, be in compliance with relevant local, state, and  
8 national laws. If residential facilities are provided to workers,  
9 those facilities shall be safe and healthy as well.

10 (9) There may be no discrimination in hiring, salary, benefits,  
11 performance evaluation, discipline, promotion, retirement or  
12 dismissal on the basis of age, sex, pregnancy, maternity leave  
13 status, marital status, race, nationality, country of origin, ethnic  
14 origin, disability, sexual orientation, gender identity, religion, or  
15 political opinion.

16 (10) No worker may be subjected to any physical, sexual,  
17 psychological, or verbal harassment or abuse, including corporal  
18 punishment, under any circumstances, including, but not limited  
19 to, retaliation for exercising his or her right to free speech and  
20 assembly.

21 (11) No worker may be forced to use contraceptives or take  
22 pregnancy tests. No worker may be exposed to chemicals,  
23 including glues and solvents, that endanger reproductive health.

24 (12) Contractors and bidders shall list the names and addresses  
25 of each subcontractor to be utilized in the performance of the  
26 contract, and list each manufacturing or other facility or  
27 operation of the contractor or subcontractor for performance of  
28 the contract. The list, which shall be maintained and updated to  
29 show any changes in subcontractors during the term of the  
30 contract, shall provide company names, owners or officers,  
31 addresses, telephone numbers, e-mail addresses, and the nature of  
32 the business association.

33 (h) Any person who certifies as true any material matter  
34 pursuant to this section that he or she knows to be false is guilty  
35 of a misdemeanor.

36 (i) The provisions of this section, as amended by the act  
37 adding this subdivision, shall be in addition to any other  
38 provisions that authorize the prosecution and enforcement of  
39 local labor laws and may not be interpreted to prohibit a local

1 prosecutor from bringing a criminal or civil action against an  
2 individual or business that violates the provisions of this section.

3 ~~(j) The certification requirements set forth in subdivisions (a)~~  
4 ~~and (f) do not apply to contracts for goods of five thousand~~  
5 ~~dollars (\$5,000) or less.~~

6 *(j) (1) The certification requirements set forth in subdivisions*  
7 *(a) and (f) do not apply to a credit card purchase of goods of two*  
8 *thousand five hundred dollars (\$2,500) or less.*

9 *(2) The total amount of exemption authorized herein shall not*  
10 *exceed seven thousand five hundred dollars (\$7,500) per year for*  
11 *each company from which a state agency is purchasing goods by*  
12 *credit card. It shall be the responsibility of each state agency to*  
13 *monitor the use of this exemption and adhere to these restrictions*  
14 *on such purchases.*

15 SEC. 6. Section 10286.1 of the Public Contract Code is  
16 amended to read:

17 10286.1. (a) For purposes of this part, except as otherwise  
18 provided in subdivisions (b) and (c), a state agency shall not  
19 enter into any contract with an expatriate corporation or its  
20 ~~subsidiaries, except for a contract for goods of five thousand~~  
21 ~~dollars (\$5,000) or less.~~ *subsidiaries.*

22 (b) (1) For purposes of this article, an “expatriate corporation”  
23 means a foreign incorporated entity that is publicly traded in the  
24 United States to which all of the following apply:

25 (A) The United States is the principal market for the public  
26 trading of the foreign incorporated entity.

27 (B) The foreign incorporated entity has no substantial business  
28 activities in the place of incorporation.

29 (C) Either clause (i) or clause (ii) applies:

30 (i) The foreign entity was established in connection with a  
31 transaction or series of related transactions pursuant to which (I)  
32 the foreign entity directly or indirectly acquired substantially all  
33 of the properties held by a domestic corporation or all of the  
34 properties constituting a trade or business of a domestic  
35 partnership or related foreign partnership, and (II) immediately  
36 after the acquisition, more than 50 percent of the publicly traded  
37 stock, by vote or value, of the foreign entity is held by former  
38 shareholders of the domestic corporation or by former partners of  
39 the domestic partnership or related foreign partnership. For  
40 purposes of subclause (II), any stock sold in a public offering

1 related to the transaction or a series of transactions is  
2 disregarded.

3 (ii) The foreign entity was established in connection with a  
4 transaction or series of related transactions pursuant to which (I)  
5 the foreign entity directly or indirectly acquired substantially all  
6 of the properties held by a domestic corporation or all of the  
7 properties constituting a trade or business of a domestic  
8 partnership or related foreign partnership, and (II) the acquiring  
9 foreign entity is more than 50 percent owned, by vote or value,  
10 by domestic shareholders or partners.

11 (iii) For purposes of this subparagraph, indirect acquisition of  
12 property includes the acquisition of a stock share, or any portion  
13 thereof, of the owner of that property.

14 (2) Notwithstanding subdivision (a), a state agency may  
15 contract with an expatriate corporation, or its subsidiary, if it was  
16 an expatriate corporation before January 1, 2004, to which both  
17 of the following apply:

18 (A) The foreign entity provides, by operation of law, by  
19 provisions of its governing documents, by resolution of its board  
20 of directors, or in any other manner, at least the following  
21 shareholders' rights:

22 (i) Shareholders of the entity have the right to inspect, at a  
23 principal place of business in the United States, copies of the  
24 entity's books and records, including, but not limited to,  
25 shareholder names, addresses, and shareholdings in accordance  
26 with the corporation law, as amended from time to time and as  
27 that law is interpreted by the courts, of the United States  
28 jurisdiction in which the entity was previously incorporated, or, if  
29 the entity was not previously incorporated, in accordance with  
30 the terms set forth in the Model Business Corporation Act, as that  
31 act may be amended from time to time, provided that, if the  
32 corporate law of the United States jurisdiction in which the entity  
33 was previously incorporated or the Model Business Corporation  
34 Act does not provide access to the shareholder names, addresses,  
35 and shareholdings, these books and records are available for  
36 inspection by shareholders for purposes properly related to their  
37 status as shareholders of the entity.

38 (ii) The entity permits its shareholders to bring derivative  
39 proceedings on behalf of the entity, provided that these derivative  
40 proceedings are brought on a basis and under the terms

1 applicable under the law, as amended from time to time and as  
2 interpreted by, or required by, the courts of the United States  
3 jurisdiction in which the entity was previously incorporated, or, if  
4 the entity was not previously incorporated, on a basis and under  
5 the terms set forth in the Model Business Corporations Act as  
6 that act may be amended from time to time and as it is interpreted  
7 by, or required by, the courts.

8 (iii) Entity transactions in which any director is interested are  
9 approved in accordance with the applicable law, as amended  
10 from time to time and as interpreted by the courts, of the United  
11 States jurisdiction in which the entity was previously  
12 incorporated, or, if the entity was not previously incorporated, in  
13 accordance with the terms set forth in the Model Business  
14 Corporations Act, as may be amended from time to time and as  
15 interpreted by the courts.

16 (iv) The entity has consented to the jurisdiction, for any  
17 otherwise available cause of action by or on behalf of the entity's  
18 shareholders, including any pendent state causes of action, of all  
19 of the following courts:

20 (I) The state courts of one or more states.

21 (II) The United States federal courts in any state in which the  
22 entity consents to the jurisdiction of that state's courts pursuant  
23 to subclause (I).

24 (v) The entity has appointed an agent for service of process in  
25 the state or states in which the entity has consented to  
26 jurisdiction, as described in clause (iv), and the entity meets at  
27 least one of the following conditions:

28 (I) The entity has unencumbered assets in the United States,  
29 which assets may include equity or debt investments in United  
30 States companies, with a book value in excess of fifty million  
31 dollars (\$50,000,000), and the entity delivers to the Secretary of  
32 State an opinion of an attorney licensed in the United States that  
33 judgments rendered against the entity may be satisfied by using  
34 these assets.

35 (II) The entity posts a bond or similar security in an amount of  
36 at least fifty million dollars (\$50,000,000).

37 (III) The entity has directors' and officers' insurance in an  
38 amount of at least fifty million dollars (\$50,000,000).

39 (vi) The entity agrees that, in connection with any lawsuit  
40 brought against it by its shareholders in any court in which the

1 entity has consented to jurisdiction as described in clause (iv), the  
2 entity will provide to the court notice of the manner in which the  
3 entity complied with clause (v) and, if the entity complied with  
4 that clause in the manner specified in subclause (I) of clause (v),  
5 a copy of the opinion described in that subclause.

6 (vii) Shareholder approval is required for any sale of all or  
7 substantially all of the entity's assets in accordance with the law,  
8 as amended from time to time and as it is interpreted by the  
9 courts, of the United States jurisdiction in which it was  
10 previously incorporated, or, if it was not previously incorporated,  
11 in accordance with the terms set forth in the Model Business  
12 Corporations Act, as it may be amended from time to time.

13 (viii) The directors and officers of the entity occupy a  
14 fiduciary relationship with the entity and its shareholders and  
15 these directors and officers, in performing their duties, act in  
16 good faith in a manner that a director or officer believes to be in  
17 the best interests of the entity and its shareholders, as that  
18 standard of care is interpreted by the courts.

19 (ix) The entity agrees to hold no more than one of every four  
20 annual shareholder meetings in a location outside the United  
21 States and, in the event that the entity holds an annual meeting  
22 outside the United States, the entity agrees to provide access to  
23 that meeting through a Web cast or other technology that allows  
24 the entity's shareholders to do both of the following:

25 (I) Listen to the meeting, watch the meeting, or both.

26 (II) Send questions that will be addressed at the meeting.

27 (x) The entity provides a description of the shareholder rights  
28 described in clauses (i) to (ix), inclusive, and any subsequent  
29 changes to these rights, on the entity's Web site or in its 10K  
30 filings with the United States Securities and Exchange  
31 Commission.

32 (B) The entity uses worldwide combined reporting to calculate  
33 the income on which it pays taxes to the state.

34 (c) The chief executive officer of a state agency or his or her  
35 designee may waive the prohibition specified in subdivision (a) if  
36 the executive officer or his or her designee has made a written  
37 finding that the contract is necessary to meet a compelling public  
38 interest. For purposes of this section, a "compelling public  
39 interest" includes, but is not limited to, ensuring the provision of  
40 essential services, ensuring the public health and safety, or an



1 emergency as defined in Section 1102. If a waiver is granted to a  
2 vendor pursuant to this subdivision, the requirement to submit a  
3 declaration of compliance, as set forth in paragraph (1) of  
4 subdivision (d), does not apply to that vendor.

5 (d) (1) For purposes of this chapter, “state agency” means  
6 every state office, department, division, bureau, board,  
7 commission, and the California State University, but does not  
8 include the University of California, the Legislature, the courts,  
9 or any agency in the judicial branch of government.

10 (2) On or after January 1, 2004, all state agencies shall, as a  
11 condition of the contract, require any vendor that is offered a  
12 contract to do business with the state to submit a declaration  
13 stating that the vendor is eligible to contract with the state  
14 pursuant to this section.

15 (3) A vendor that declares as true any material matter in a  
16 declaration described in this subdivision that he or she knows to  
17 be false is guilty of a misdemeanor.

18 (e) (1) Except as provided in paragraph (2) and subdivision  
19 (f), this section applies to contracts that are entered into on or  
20 after January 1, 2004.

21 (2) With respect to an entity that was an expatriate  
22 corporation, as defined in paragraph (1) of subdivision (b), before  
23 January 1, 2004, this section applies to contracts that are entered  
24 into on or after April 1, 2004.

25 ~~(f) On and after January 1, 2006, the declaration requirement~~  
26 ~~set forth in subdivision (d) does not apply to contracts for goods~~  
27 ~~of five thousand dollars (\$5,000) or less.~~

28 *(f) (1) The declaration requirement set forth in subdivision (d)*  
29 *does not apply to a credit card purchase of goods of two*  
30 *thousand five hundred dollars (\$2,500) or less.*

31 *(2) The total amount of exemption authorized herein shall not*  
32 *exceed seven thousand five hundred dollars (\$7,500) per year for*  
33 *each company from which a state agency is purchasing goods by*  
34 *credit card. It shall be the responsibility of each state agency to*  
35 *monitor the use of this exemption and adhere to these restrictions*  
36 *on such purchases.*

37 SEC. 7. Section 10295.1 of the Public Contract Code is  
38 amended to read:

39 10295.1. (a) A state department or agency shall not contract  
40 for the purchase of tangible personal property ~~or for the purchase~~

1 ~~of other goods that exceed five thousand dollars (\$5,000)~~ from a  
2 vendor, contractor, or an affiliate of a vendor or contractor,  
3 unless that vendor, contractor, and all of its affiliates that make  
4 sales for delivery into California are holders of a California  
5 seller's permit issued pursuant to Article 2 (commencing with  
6 Section 6066) of Chapter 2 of Part 1 of Division 2 of the  
7 Revenue and Taxation Code, or are holders of a certificate of  
8 registration issued pursuant to Section 6226 of the Revenue and  
9 Taxation Code. A vendor or contractor that sells tangible  
10 personal property to a state department or agency, and each  
11 affiliate of that vendor or contractor that makes sales for delivery  
12 into California, shall be regarded as a "retailer engaged in  
13 business in this state" and shall be required to collect the  
14 California sales or use tax on all its sales into the state in  
15 accordance with Part 1 (commencing with Section 6001) of  
16 Division 2 of the Revenue and Taxation Code.

17 (b) Beginning on and after January 1, 2004, each vendor,  
18 contractor, or affiliate of a vendor or contractor that is offered a  
19 contract to do business with a state department or state agency  
20 shall submit to that state department or agency a copy, as  
21 applicable, of that retailer's seller's permit or certificate of  
22 registration, and a copy of each of the retailer's applicable  
23 affiliate's seller's permit or certificate of registration, as  
24 described in subdivision (a). This subdivision does not apply to  
25 ~~contracts for goods of five thousand dollars (\$5,000) or less that~~  
26 ~~are offered on or after January 1, 2006.~~ *a credit card purchase of*  
27 *goods of two thousand five hundred dollars (\$2,500) or less. The*  
28 *total amount of exemption authorized herein shall not exceed*  
29 *seven thousand five hundred dollars (\$7,500) per year for each*  
30 *company from which a state agency is purchasing goods by*  
31 *credit card. It shall be the responsibility of each state agency to*  
32 *monitor the use of this exemption and adhere to these restrictions*  
33 *on such purchases.*

34 (c) A state department or state agency is exempted from the  
35 provisions of subdivision (a) if the executive director, or his or  
36 her designee, of that state department or agency makes a written  
37 finding that the contract is necessary to meet a compelling state  
38 interest.

39 (d) For the purposes of this section:

1 (1) “Affiliate of the vendor or contractor” means any person or  
2 entity that is controlled by, or is under common control of, a  
3 vendor or contractor through stock ownership or any other  
4 affiliation.

5 (2) “Compelling state interest” includes, but is not limited to,  
6 the following:

7 (A) Ensuring the provision of essential services.

8 (B) Ensuring the public health, safety and welfare.

9 (C) Responding to an emergency, as defined in Section 1102.

10 (3) “State department or agency” means every state office,  
11 department, division, bureau, board, commission and the  
12 California State University, but does not include the University  
13 of California, the Legislature, the courts, and any agency in the  
14 judicial branch of government.

15 SEC. 8. Section 10296 of the Public Contract Code is  
16 amended to read:

17 10296. (a) Every contract entered into by any state agency  
18 for any purpose specified in subdivisions (a) to (d), inclusive, of  
19 Section 10295 shall contain a statement by which the contractor  
20 swears under penalty of perjury that no more than one final,  
21 unappealable finding of contempt of court by a federal court has  
22 been issued against the contractor within the immediately  
23 preceding two-year period because of the contractor’s failure to  
24 comply with an order of a federal court which orders the  
25 contractor to comply with an order of the National Labor  
26 Relations Board. For purposes of this section, a finding of  
27 contempt does not include any finding that has been vacated,  
28 dismissed, or otherwise removed by the court because the  
29 contractor has complied with the order which was the basis for  
30 the finding. The state may rescind any contract in which the  
31 contractor falsely swears to the truth of the statement required by  
32 this section.

33 ~~(b) This section does not apply to contracts for goods of five~~  
34 ~~thousand dollars (\$5,000) or less.~~

35 *(b) (1) This section does not apply to a credit card purchase*  
36 *of goods of two thousand five hundred dollars (\$2,500) or less.*

37 *(2) The total amount of exemption authorized herein shall not*  
38 *exceed seven thousand five hundred dollars (\$7,500) per year for*  
39 *each company from which a state agency is purchasing goods by*  
40 *credit card. It shall be the responsibility of each state agency to*

1 *monitor the use of this exemption and adhere to these restrictions*  
2 *on such purchases.*

3 SEC. 9. Section 12163 of the Public Contract Code is  
4 amended to read:

5 12163. (a) The director, in consultation with the board, shall  
6 review the procurement specifications currently used by the  
7 department in order to eliminate, wherever economically  
8 feasible, discrimination against the procurement of recycled  
9 paper products.

10 (b) The director, in consultation with the board, shall review  
11 the recycled paper product specifications at least annually to  
12 consider increasing the percentage of recycled paper product in  
13 paper and woodpulp product purchases. The director shall  
14 include his or her conclusions and recommendations in the  
15 department's annual report pursuant to Section 12225.

16 (c) When contracting with the department for the sale of  
17 material subject to this article, the contractor shall certify in  
18 writing to the contracting officer or his or her representative that  
19 the material offered contains the minimum percentage of  
20 recycled paper required by Section 12161 and shall specify the  
21 minimum, if not exact, percentage of secondary and  
22 postconsumer material in the paper products. The certification  
23 shall be furnished under penalty of perjury. The certification  
24 ~~requirement set forth in this subdivision does not apply to a~~  
25 ~~contract for goods of five thousand dollars (\$5,000) or less.~~  
26 *requirement set forth in this subdivision does not apply to a*  
27 *credit card purchase of goods of two thousand five hundred*  
28 *dollars (\$2,500) or less. The total amount of exemption*  
29 *authorized herein shall not exceed seven thousand five hundred*  
30 *dollars (\$7,500) per year for each company from which a state*  
31 *agency is purchasing goods by credit card. It shall be the*  
32 *responsibility of each state agency to monitor the use of this*  
33 *exemption and adhere to these restrictions on such purchases.*

34 (d) The department, in consultation with the board, shall  
35 establish purchasing practices which, to the maximum extent  
36 economically feasible, assure purchase of materials which may  
37 be recycled or reused when discarded.

38 (e) The department shall make every effort to eliminate  
39 purchases of paper products deemed potential contaminants to  
40 the state's recycling program pursuant to Section 12165.

SEC. 10. Section 12205 of the Public Contract Code is amended to read:

12205. (a) (1) All state agencies shall require all contractors to certify in writing the minimum percentage, if not the exact percentage, of postconsumer and secondary material in the materials, goods, or services provided or used. This certification shall be furnished under penalty of perjury.

(2) The certification requirement set forth in paragraph (1) ~~does not apply to contracts for goods of five thousand dollars (\$5,000) or less.~~ *does not apply to a credit card purchase of goods of two thousand five hundred dollars (\$2,500) or less. The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars (\$7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on such purchases.*

(b) The department, in consultation with the board, shall review and revise the procurement specifications used by state agencies in order to eliminate restrictive specifications and discrimination against the procurement or purchase of recycled products. Fitness and quality being equal, all state agencies shall purchase recycled products instead of nonrecycled products whenever recycled products are available at the same total cost as nonrecycled products. All state agencies shall allow a price preference, as determined by the board pursuant to Section 12162. In determining procurement specifications, with the exception of any specifications that have been established to preserve the public health and safety, all state procurement and purchasing specifications shall be established in a manner that results in the maximum state procurement and purchase of recycled products.

(c) (1) To assist the state in meeting the requirements of subdivision (a) of Section 12162 and subdivision (e) of this section, the department, in consultation with the board, may also establish recycled-content disclosure, recycled product-only bids, cooperative purchasing arrangements, or conduct an analysis of solid waste diversion from disposal facilities, to meet the requirements for recycled products and to encourage the maximum state procurement and purchase of recycled products.

1 All state agencies shall, if feasible, implement recycled  
2 product-only bids for recycled products as defined in subdivision  
3 (a) of Section 12200, in order to meet the requirements for  
4 recycled products set forth in this section and Section 12162.

5 (2) This subdivision applies to the procurement or purchase of  
6 the following materials, goods, and supplies, or products  
7 containing the following recycled resources:

8 (A) Paper products, that include, but are not limited to, fine  
9 papers, such as xerographic and envelope papers and form bond,  
10 corrugated boxes, newsprint, tissue, and toweling.

11 (B) Compost and cocompost products.

12 (C) Glass.

13 (D) Oil.

14 (E) Plastic.

15 (F) Solvents and paint, including water-based paint.

16 (G) Tires.

17 (H) Steel.

18 (I) Antifreeze.

19 (d) All state agencies shall, if feasible, establish purchasing  
20 practices that ensure the purchase of materials, goods, and  
21 supplies that may be recycled or reused when discarded.

22 (e) The department shall set the following requirements for  
23 purchases made by state agencies:

24 (1) By January 1, 1996, at least 20 percent of state purchases  
25 are of recycled products.

26 (2) By January 1, 1998, at least 30 percent of state purchases  
27 are of recycled products.

28 (3) On and after January 1, 2000, at least 50 percent of state  
29 purchases are of recycled products.

30 (4) The requirements specified in this subdivision shall be  
31 applied to the purchases of state agencies for products listed in  
32 this section, except in subparagraph (A) of paragraph (2) of  
33 subdivision (c) for which requirements are specified in Section  
34 12162.

35 (f) The purchases of the state agencies shall meet each  
36 requirement for, and be applied to the total dollar amount of,  
37 each specified product category as defined in this section. The  
38 purchase of a recycled-content product from one category may  
39 not be applied toward the requirements for, or the total dollar

1 amount of, any other category listed in this section or Section  
2 12157, 12162, 12301, or 12305.

3 SEC. 11. Section 42480 of the Public Resources Code is  
4 amended to read:

5 42480. (a) (1) A state agency that purchases or leases  
6 covered electronic devices shall require each prospective bidder,  
7 to certify that it, and its agents, subsidiaries, partners, joint  
8 venturers, and subcontractors for the procurement, have complied  
9 with this chapter and any regulations adopted pursuant to this  
10 chapter, or to demonstrate that this chapter is inapplicable to all  
11 lines of business engaged in by the bidder, its agents,  
12 subsidiaries, partners, joint venturers, or subcontractors.

13 (2) The certification requirement set forth in paragraph (1)  
14 ~~does not apply to prospective bidders for contracts for the~~  
15 ~~purchase or lease of covered electronic devices of five thousand~~  
16 ~~dollars (\$5,000) or less.~~ *does not apply to a credit card purchase*  
17 *of goods of two thousand five hundred dollars (\$2,500) or less.*  
18 *The total amount of exemption authorized herein shall not exceed*  
19 *seven thousand five hundred dollars (\$7,500) per year for each*  
20 *company from which a state agency is purchasing goods by*  
21 *credit card. It shall be the responsibility of each state agency to*  
22 *monitor the use of this exemption and adhere to these restrictions*  
23 *on such purchases.*

24 (b) Failure to provide certification pursuant to this section  
25 shall render the prospective bidder and its agents, subsidiaries,  
26 partners, joint venturers, and subcontractors ineligible to bid on  
27 the procurement of covered electronic devices.

28 (c) The bid solicitation documents shall specify that the  
29 prospective bidder is required to cooperate fully in providing  
30 reasonable access to its records and documents that evidence  
31 compliance with this chapter.

32 (d) Any person awarded a contract by a state agency that is  
33 found to be in violation of this section is subject to the following  
34 sanctions:

35 (1) The contract shall be voided by the state agency to which  
36 the equipment, materials, or supplies were provided.

37 (2) The contractor is ineligible to bid on any state contract for  
38 a period of three years.

39 (3) If the Attorney General establishes in the name of the  
40 people of the State of California that any money, property, or

1 benefit was obtained by a contractor as a result of violating this  
2 section, the court may, in addition to any other remedy, order the  
3 disgorgement of the unlawfully obtained money, property, or  
4 benefit in the interest of justice.

5 SEC. 12. Section 42498 of the Public Resources Code is  
6 amended to read:

7 42498. (a) (1) A state agency that purchases or leases cell  
8 phones shall require each prospective bidder, to certify that it,  
9 and its agents, subsidiaries, partners, joint venturers, and  
10 subcontractors for the procurement, have complied with this  
11 chapter and any regulations adopted pursuant to this chapter, or  
12 to demonstrate that this chapter is inapplicable to all lines of  
13 business engaged in by the bidder, its agents, subsidiaries,  
14 partners, joint venturers, or subcontractors.

15 (2) The certification requirement set forth in paragraph (1)  
16 ~~does not apply to prospective bidders for contracts for the~~  
17 ~~purchase or lease of cell phones of five thousand dollars (\$5,000)~~  
18 ~~or less.~~ *does not apply a credit card purchase of goods of two*  
19 *thousand five hundred dollars (\$2,500) or less. The total amount*  
20 *of exemption authorized herein shall not exceed seven thousand*  
21 *five hundred dollars (\$7,500) per year for each company from*  
22 *which a state agency is purchasing goods by credit card. It shall*  
23 *be the responsibility of each state agency to monitor the use of*  
24 *this exemption and adhere to these restrictions on such*  
25 *purchases.*

26 (b) Failure to provide certification pursuant to this section  
27 shall render the prospective bidder and its agents, subsidiaries,  
28 partners, joint venturers, and subcontractors ineligible to bid on  
29 the procurement of cell phones.

30 (c) The bid solicitation documents shall specify that the  
31 prospective bidder is required to cooperate fully in providing  
32 reasonable access to its records and documents that evidence  
33 compliance with this chapter.

34 (d) Any person awarded a contract by a state agency that is  
35 found to be in violation of this section is subject to the following  
36 sanctions:

37 (1) The contract shall be voided by the state agency to which  
38 the equipment, materials, or supplies were provided.

39 (2) The contractor is ineligible to bid on any state contract for  
40 a period of three years.



1     (3) If the Attorney General establishes in the name of the  
2 people of the State of California that any money, property, or  
3 benefit was obtained by a contractor as a result of violating this  
4 section, the court may, in addition to any other remedy, order the  
5 disgorgement of the unlawfully obtained money, property, or  
6 benefit in the interest of justice.

O